***THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY**

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WRIT PETITION NO : 22669 of 2004

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% 09.12.2004

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Between:

Chitturi Aruna W/o. Jagdeesh Kumar.

... PETITIONER

AND

The Deputy Commissioner, Endowments Department,

Visakhapatnam & two others.

...RESPONDENTS

! COUNSEL FOR THE PETITIOENR: Smt.N(P) Anjana Devi

^ COUNSEL FOR THE RESPONDENT Nos.1&3: G.P. for

Endowments

COUNSEL FOR THE RESPONDENT No.2: Smt.N.Indrani,

Standing Counsel

< Gist:

> Head Note:

? CITATIONS:

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE NINTH DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE L.NARASIMHA REDDY

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WRIT PETITION NO : 22669 of 2004

Between:

Chitturi Aruna, W/o. Jagdeesh Kumar,Rep by G.P.A. Holder Gudivada Murali, S/o. Pattabhi, Hindu, Male aged about 42 years,R/o. Gudevari Street, Visakhapatnam. **... PETITIONER**

AND

1 The Deputy Commissioner, Endowments Department,

Visakhapatnam.
2 Sri Venkateswara Swamy Temple Post, Rep by Executive

Officer, Visakhapatnam.
3 The Regional Joint Commissioner, Multi Zone-1, Endowments

Departments, Kakinada A.P. **...RESPONDENTS**

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ, order or direction more particularly one in the nature of writ of mandamus declaring the order of the 3rd respondent in R.P.No. 62 of 2004 dated 11-11-2004 served on the petitioner on 2-12-2004 conforming the ex-parte order of the eviction passed by the 1st respondent dated 24-7-2004 in O.A.NO. 1 of 2002 as illegal, arbitrary capricious, and violative of principles of natural justice and without giving reasonable opportunity for adducting oral and documentary evidence by both the respondents and consequently to set-aside the said orders and remand the matter to the 1st respondent with liberty to the petitioner to adduce oral and documentary evidence to pass the order on merits.

Counsel for the Petitioner : SMT.N.(P).ANJANA DEVI & Sri P.SATYANARAYANA

Counsel for the Respondent Nos.1&3 : GP FOR ENDOWMENTS

Counsel for the Respondent No.2 : SMT.N.INDRANI, STANDING COUNSEL.

The Court at the admission stage made the following :

O R D E R:

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The petitioner was the lessee of a residential building premises belonging to Sri Venkateswara Swamy Temple, Port Area, Visakhapatnam. After the expiry of the lease period, proceedings under Section 83 of the A.P. Charitable and Hindu Religious Institutions and Endowments Act, 1987 (for short “the Act”) were initiated against her before the Deputy Commissioner of Endowments, Visakhapatnam, first respondent, in O.A.No.1 of 2002. The first respondent passed an order dated 24.07.2003, holding that the petitioner is an encroacher, within the meaning of Section 83(2) of the Act, and directed her eviction. Aggrieved thereby, the petitioner preferred a revision, being R.P.No.62 of 2004, under Section 92 of the Act, before the third respondent. The third respondent dismissed the said R.P. on 11.11.2004. This writ petition is filed challenging the orders passed by the respondents 1 and 3.

Smt.Anjana Devi, learned counsel for the petitioner, submits that the petitioner had incurred an expenditure of about Rs.1,50,000/- for effecting the repairs of the building, with the approval of the authorities of the temple, and with a clear understanding that the lease would be renewed. She contends that the first respondent did not give adequate opportunity to the petitioner either to lead

evidence or to make statement, and the petitioner was set ex parte. She also contends that the third respondent did not appreciate the grounds raised by the petitioner in the revision, and the order of the first respondent was mechanically upheld. She also contends that having regard to the fact that the petitioner had acquired a right by spending such huge sum, she cannot be treated as an encroacher, and the order of eviction cannot be sustained.

Smt.N.Indrani, learned standing counsel for second respondent, on the other hand, submits that the lease in favour of the petitioner expired in the year 1996, and even after the same, she did not vacate the premises in spite of several demands. She contends that there is nothing on record to disclose that the petitioner had incurred any expenditure, or that there was any understanding to permit her to continue as lessee, beyond the agreed period of lease. Her case is that the petitioner had resorted to one proceedings or the other, with a view to continue in unauthorized possession of the property.

It is a matter of record that the petitioner was granted lease for three years for the premises, with effect from 1.10.1993, on a monthly rent of Rs.150/-. There was some dispute as to the regularity in payment of rents. Be that as it may, the petitioner was issued a quit notice under Section 83 of the Act on 11.12.1997. On receipt of the same, the petitioner filed O.S.No.2645 of 1997, in the Court of I Additional District Munsif, Visakhapatnam, for the relief of perpetual injunction against the temple from evicting her. The suit was dismissed on 7.05.1999 and it became final.

Second respondent initiated proceedings under Section 83 of the Act before the first respondent, and it was taken up as O.A.No.1 of 2002. The petitioner participated in the same to the stage of cross-examining PW.1. Thereafter, she did not participate and was set ex parte. The first respondent discussed the matter at length, particularly with reference to the representation made by the petitioner for selling the property at the value in the Valuation Register.

The petitioner filed a revision before the second respondent and several grounds were urged before him. The matter was protracted for several months together, on the ground that an application for grant of stay is pending with the Government in a revision. Be that as it may, the third respondent discussed all the factual and legal aspects and upheld the order of the first respondent.

One of the important contentions advanced on behalf of the petitioner is that she incurred an expenditure of Rs.1,50,000/-, and in that view of the matter, she is entitled to be continued as lessee, at least for a fresh term. Reliance is placed upon a letter dated 25.03.1995 said to have been addressed by the second respondent, permitting her to undertake the repairs. Further, a receipt dated 25.05.1995 is filed, wherein a sum of Rs.1,00,000/- is said to have been received from her for effecting the repairs. Even if the letter said to have been addressed by the second respondent is taken as true, no obligation flow from it, enabling the petitioner to continue as lessee. Having regard to the definition of “encroacher” given in explanation to Section 83 of the Act, there is hardly any scope for expanding it. Once the term of a lease expires, irrespective of the oral or written understanding between the parties, the erstwhile lessee is to be treated and branded as “encroacher”, and various steps provided for under Section 83 of the Act would follow. Viewed from any angle, this Court does not find any basis to interfere with the concurrent orders passed by the respondents 1 and 3. The second respondent was already put to great loss on account of the unauthorized continuance of the petitioner for the past eight years after the lease in her favour expired.

Hence, the writ petition is dismissed. There shall be no order as to costs.

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9th December, 2004

Note: L.R.copy to be marked.

(B/o)

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To

1 The Deputy Commissioner, Endowments Department,

Visakhapatnam.
2 The Executive Officer, Sri Venkateswara Swamy Temple,

Visakhapatnam.
3 The Regional Joint Commissioner, Multi Zone-1, Endowments

Departments, Kakinada A.P.

4. Two C.Cs to the Govt.Pleader for Endowments,

High Court buildings, Hyderabad (OUT).

5 Two CD copies